IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

Nautilus Insurance Company,	)	Civ. No. 2:22-cv-1307-RMG
	)	
Petitioner,	)	
	)	**DEFENDANT RICHARD**
v.	)	**ALEXANDER MURDAUGH, SR.'S**
	)	**RESPONSE IN SUPPORT OF**
Richard Alexander Murdaugh, Sr., Cory	)	**PLAINTIFF'S MOTION**
Flemming, Moss & Kuhn, P.A., Chad	)	**CHALLENGING STANDING OF CO-**
Westendorf, and Palmetto State	)	**RECEIVERS AND ITS COUNSEL**
Bank	)	**TO APPEAR, PLEAD, OR RESPOND**
	)	**TO DISCOVERY**
Defendants.	)	
_____	)	

Plaintiff Richard Alexander Murdaugh, Sr., through his undersigned attorneys, hereby

responds in support of Defendant Nautilus Insurance Company's motion challenging the standing

of co-receivers John T. Lay and Peter McCoy and their counsel Amy Hill to appear in this action

on behalf of Mr. Murdaugh.

Plaintiff correctly notes the Court has already ruled the Receivership Order only provides

authority for the Co-Receivers to defend *in rem* actions relating to Mr. Murdaugh's assets and not

to defend *in personam* actions against Mr. Murdaugh himself. Mr. Murdaugh agrees with and

adopts the arguments under the first point heading of the argument section of Plaintiff's motion

challenging the Co-Receivers' authority to represent him. ECF No. 83.

Additionally, assuming *arguendo* without conceding that the appointment of the Co-

Receivers was proper, they are interested parties insofar as they have an interest in ensuring Mr.

Murdaugh does not use these proceedings to prefer one creditor over another or somehow dissipate

the Receivership Estate. They may protect that interest by making appropriate motions as

interested parties. But they cannot act for Mr. Murdaugh personally. Mr. Murdaugh is a competent

adult not under any conservatorship. The Court of Common Pleas did not appoint the co-receivers

as conservators, had no authority to do so, and to the extent its order appointing the Co-Receivers

seems to create a conservatorship, it is void *ab initio*. In South Carolina, only the probate court

can appoint a conservator for an adult. *See* S.C. Code § 62-5-403 *et seq.*

Mr. Murdaugh cannot defend this action at this time because he is temporarily unavailable.

His murder trial is only about 40 business days away. Again, Mr. Murdaugh urges the Court to

grant a short, reasonable stay as to Mr. Murdaugh so he may participate in these proceedings after

defending the murder charges to be tried in January. *See* ECF Nos. 87 & 88. The purpose of these

judicial proceedings is to discover the truth of Plaintiff's claims. *See Johnston v. Harris Cnty.*

Flood Control Dist., 869 F.2d 1565, 1578 (5th Cir. 1989) ("The goal of grand jury proceedings,

of criminal trials, and of civil trials is to resolve a dispute by gathering the facts and arriving at the

truth . . . ."). Forcing Mr. Murdaugh into a silent default will impede that purpose without

achieving anything. It will not expedite this litigation. Mr. Murdaugh's participation, not his

exclusion, will expedite the ultimate resolution of this case.

If the Court nevertheless decides not to grant a short stay and Mr. Murdaugh

consequentially is unable to participate in these proceedings, the proper response to his lack of

participation would be entry of a default. Fed. R. Civ. P. 55. The Court should not instead allow

a receiver appointed on the motion of the plaintiff in an unrelated state-court tort suit to act as a

guardian *ad litem* in this case, representing a competent adult against his will and *in absentia*.

Respectfully submitted,

s/Phillip D. Barber
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Columbia, South Carolina